Record No. 96-542

In The Supreme Court of the United States

October Term 1996

WALTER McMILLIAN,
Petitioner,

v.

MONROE COUNTY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF THE SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION AS *AMICUS CURIAE*

J. Michael McGuinness*
P.O. Box 952
Elizabethtown, N.C. 28337
910-862-7087

**Counsel of Record*

Appellate Printing Services • 2 South 6th Street • Richmond, VA 23219 • (800) 642-7789

18 pp

QUESTIONS PRESENTED

1. Whether a county sheriff is a final policymaker for his/her county in law enforcement matters for purposes of county constitutional tort liability under 42 U.S.C. 1983 where the sheriff is the ultimate authority for county law enforcement policy?

    A) Whether the acts and edicts of a county sheriff performing traditional law enforcement functions represents official county policy where the county sheriff's department is the exclusive provider of law enforcement services within the county?

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INTEREST OF THE AMICUS CURIAE

The Southern States Police Benevolent Association (hereafter SSPBA) is a non-profit association comprised of over twenty thousand law enforcement officers and related public employees in ten southern states including Alabama. SSPBA and its various state affiliates engage in various types of advocacy, lobbying, litigation and scientific analyses of various law enforcement issues. SSPBA promotes improved law enforcement and constitutional protection for everyone.

SSPBA and its members are vitally interested in the grave constitutional issues before this Court. Law enforcement officers are frequently victims of constitutional torts, often in the employment context. In the experience of SSPBA, counties are pervasively involved in the constitutional torts committed by their sheriffs. SSPBA has litigated a number of cases involving similar issues of county liability for the constitutional torts of a sheriff. SSPBA accordingly submits this brief to assist this Court in its resolution of this important case.[1]

STATEMENT OF THE CASE

Amici adopt the Statement of the Case and Facts as presented by Petitioner.

SUMMARY OF ARGUMENT

Sheriffs are typically the final repository of law enforcement policy for counties throughout America. The acts and edicts of a county sheriff performing traditional law enforcement functions in a county where the sheriff's department is the exclusive provider of law enforcement services represents the official policy of that county.

The overwhelming weight of substantially settled circuit court authority holds that counties may be liable for constitutional torts of its sheriff whenever the sheriff is performing a traditional law enforcement function. Accordingly, this Court should reverse the Eleventh Circuit below, and adopt the approach taken in *Dotson v. Chester*, 937 F.2d 920 (4th Cir. 1991) and similar cases. The decision below is an aberration and is inconsistent with this Court's decisions in

[1] The parties have consented to the filing of this brief amicus curiae. Letters indicating their consent will be filed with the Clerk of Court.

Monell v. Dept. of Social Services, 436 U.S. 658 (1978), *Pembaur v. City of Cinncinnati*, 475 U.S. 469 (1986) and *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988).

The decision of the Eleventh Circuit below represents a severe restriction upon the rights of victims to challenge improper law enforcement tactics necessitating constitutional tort liability against counties. Without counties as party defendants, traditionally responsible tortfeasors will be allowed to escape responsibility and victims will be deprived of appropriate compensation and justice.

I. INTRODUCTION: THE TRADITIONAL ROLE OF SHERIFFS AND COUNTIES

When a sheriff or his deputy commits an actionable constitutional tort while acting in their official capacity, the determinative question arises of who is responsible and ultimately liable. Since sheriffs are governmental actors, they act under color of authority vested in them by their state and local law. Sheriffs are typically held to be **county**, rather than state officials. In most states, undoubtedly Sheriffs are county officials. See *Harter v. C.D. Vernon*, 101 F.3d 334, 340-42 (4th Cir. 1996), citing *Hull v. Oldham*, 104 N.C. App. 29, 41, 407 S.E.2d 611, 618 (N.C. App. 1991). As the Fourth Circuit held in *Harter*: "It has long been understood that a sheriff is a 'law enforcement officer of the county.'" 101 F.3d 341, quoting *Southern Railway v. Mecklenburg County*, 231 N.C. 148, 56 S.E.2d 438, 440 (N.C. 1949). In *Southern Railway*, the North Carolina Supreme Court explained:

> "[o]ne of the primary duties of the county, acting through its public officers, is to secure the public safety by enforcing the law ... This

> is an indispensable function of county government ... The sheriff is the chief law enforcement officer of the county."

Harter observed: "**Sheriffs have been considered county officers since the creation of that office in England.**" (emphasis added). 101 F.3d 341.

Since sheriffs and their deputies are frequently shielded from personal and individual liability by the doctrine of qualified immunity, and because many sheriffs and their deputies are effectively judgment proof in their individual capacities, the only real and effective remedy for a constitutional tort by the sheriff is the County. Since a judgment against a public official in an official capacity suit is tantamount to a judgment against the governmental entity, *Brandon v. Holt*, 469 U.S. 464 (1985), the decision of the court below could leave victims of official misconduct without an effective remedy.

Under Respondent's view of section 1983 jurisprudence, no entity of government would be financially responsible for the acts of the County sheriff in his official capacity in the performance of law enforcement functions. Such a result is untenable and is inconsistent with this Court's history of affording remedies where important federal rights are contravened.

In most jurisdictions, state law frames the parameters of responsibility for various government functions and overlapping responsibilities among sheriffs and counties.[2] Counties

[2] For example, see the North Carolina system, which is set out in a state constitutional and statutory scheme appear in scattered sections of the General Statutes. See N.C.G.S. 153A-101 (Board of County Commissioners directs fiscal policy for county), 153A-1-3 (regulating employment practices of sheriffs and counties over deputy sheriffs); chapter 162 which provides numerous sections regulating the sheriff in various areas; N.C.G.S. 162-22 (providing that the sheriff must "have the care and custody of the jail in his county."

frequently enact local ordinances to further delineate the responsibilities between the sheriff and the county. This structure typically creates layers of both state and local law, enacted to serve local conditions and customs, that form the framework of rights and responsibilities of sheriffs and county governments. Unfortunately, state and local legislation often do not adequately delineate responsibilities sufficiently clear so that one can readily allocate liability.[3] Often, there are shared obligations which results in shared responsibility and liability. Even where the county is not a direct participant in the conduct giving rise to the complaint, under this Court's teachings in *Pembaur* and other cases, the county is responsible for the conduct of its final policymakers whoever they may be.

Throughout America, sheriffs are typically final policymakers in county law enforcement matters. In most American jurisdictions, traditional sheriffs and their departments provide law enforcement within their county. Unless there is some other county organized police, sheriffs traditionally provide the exclusive law enforcement function for the entire county. When county sheriffs provide the **exclusive** countywide law enforcement services, such sheriffs undoubtedly constitute the final county policymaker for law enforcement matters.

Sheriffs' Departments are supported by their sponsoring counties in numerous and varied ways. See *Harter v. C.D. Vernon,* 101 F.3d 334 (4th Cir. 1996) Counties typically have statutory responsibilities to provide law enforcement, both directly and indirectly. Counties typically provide law enforce-

[3] Consequently, there has been substantial litigation of these issues, much of which has to be on a case by case basis in order to properly apply both state and local law to determine who is the final policymaker in a given area. See e.g., *Reid v. Johnston County*, 688 F. Supp. 200, 202 (E.D.N.C. 1988), aff'd, 878 F.2d 430 (4th Cir. 1989)(explaining how the North Carolina statute makes clear that the responsibility for county confinement rests with the county.)

ment through their own sheriff, although, metropolitan and other areas also sometimes employ police agencies.[4] Counties typically provide the backbone of their sheriff's departments - financially, by hiring personnel, by performing various other personnel functions, by purchasing police equipment, by affording training, by providing law enforcement facilities, among other things. Counties typically have the responsibility of providing a local jail, which are traditionally managed by the sheriff. *See Dotson v. Chester; Heflin v. Stewart County*, 958 F.2d 709, 716-17 (6th Cir. 1992)(section 1983 claim against county for inmate's medical needs valid because sheriff was the sole policymaker for the conduct of jail officials). Consequently, in every material respect, sheriffs are the final policymaking authority for law enforcement purposes within the County especially where the sheriff's department is the exclusive provider of law enforcement services.[5]

These and other compelling circuit court authorities afford substantial history and solid precedent for Petitioner's position. These cases are consistent with this Court's teachings in *Monnel*, *Pembaur*, *Praprotnik* and their progeny, which should not be disturbed. The overwhelming weight of circuit court authority is consistent with *Dotson*, therefore generally making

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[4] Where there is an additional countywide law enforcement agency that has jurisdiction, the sheriff may not necessarily be the final policymaking authority. One would have to examine the delegation of authority to the other countywide law enforcement agency, and contrast that with the authority afforded the sheriff, in order to ascertain section 1983 liability.

[5] See, e.g., *Dotson v. Chester*, 937 F.2d 920 (4th Cir. 1991); *Brooks v. George County*, 84 F.3d 157, 165 (5th Cir. 1996); *Buzek v. County of Saunders*, 972 F.2d 992 (8th Cir. 1992); *Bennet v. Pippin*, 74 F.3d 578, 586 (5th Cir. 1996); *Turner v. Upton County*, 915 F.2d 133, 136-37 (5th Cir. 1990); *Crowder v. Sinyard*, 884 F.2d 804 (5th Cir. 1989); *Blackburn v. Snow*, 771 F.2d 556 (1st Cir. 1985); *Weber v. Dell*, 804 F.2d 796 (2nd Cir. 1986); *Marchese v. Lucas*, 758 F.2d 181 (6th Cir. 1985).

counties liable for the constitutional torts of their sheriffs.

The Eleventh Circuit decision below is an aberration and a retreat from this Court's precedents. The *Monnel* doctrine has worked well in governing section 1983 claims against counties and sheriffs. Respondents, nor the Eleventh Circuit below, have offered any justification for such a retreat from this Court's traditional constitutional protection.

II. DECISIONS OF FINAL POLICYMAKING OFFICIALS IN LAW ENFORCEMENT ARE IMPUTABLE TO THE GOVERNMENTAL ENTITY

Governmental liability arises from a deprivation of federal rights caused by any official with final policymaking authority. *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988); *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986). This Court has made clear that the question of "whether a particular official has 'final policymaking authority' is a question of *state* law." *Praprotnik*, 485 U.S. at 124. In assessing this question, Justice O'Connor explained how "state law (which may include valid local ordinances and regulations) will always direct a court to some official or body that has the responsibility for making law or setting policy in any given area of a local government's business." *Id.* at 124.[6] In law enforcement at the local level, it is the county sheriff.

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[6] As explained by the Fourth Circuit in *Dotson v. Chester*, 937 F.2d at 924, "state and local laws" must be "searched" ... to determine "whether the actions of a county sheriff represent final policymaking authority for the county, thereby creating county liability." *Dotson* explained that "our exploration passes through case law, the county code, state statutes, and state regulations." 937 F.2d at 295.

III. *DOTSON V. CHESTER* COMPELS COUNTY LIABILITY FOR CONSTITUTIONAL TORTS OF SHERIFFS PERFORMING TRADITIONAL LAW ENFORCEMENT FUNCTIONS

In *Dotson*, the Fourth Circuit held that the actions of a Sheriff constituted the final policymaking authority of the County, therefore subjecting the County to liability for the Sheriff's conduct. The court also held that the Sheriff wielded county, as opposed to state, authority. *Dotson* involved an examination of state law and the particular symbiotic relationship between the sheriff and county.[7] Accord *Revene v. Charles County Commissioners*, 882 F.2d 870, 874 (4th Cir. 1989)(Sheriff's Department is an agency of County government).

The Fourth Circuit's conclusion in *Dotson* heavily relied upon *Parker v. Williams*, 862 F.2d 1471 (11th Cir. 1989), which held the county liable for the sheriff's employment decisions because the sheriff possessed the "ultimate county authority" with respect to personnel decisions. *Parker* reasoned that "[t]he county need not exercise direct control over the sheriff with respect to the sheriff's hiring decisions in order to be liable under section 1983 for damages caused by those decisions." *Id.* at 1479-80.

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[7] *Dotson* recounted analysis from a number of leading cases dealing with the issue of holding counties liable for the conduct of Sheriffs. See cases cited at 937 F.2d at 925 - 932, especially *Turner v. Union County*, 915 F.2d 133 (5th Cir. 1990)("County liability under section 1983 must attach ... when the official representing the ultimate repository of power in county makes a deliberate decision..."); *Zook v. Brown*, 865 F.2d 887, 895 (7th Cir. 1989)(sheriff responsible for employee discipline therefore County liable for Sheriff's conduct). See *Logan v. Shealy*, 660 F.2d 1007 (4th Cir. 1981)(sheriff's conduct chargeable to county).

In *Flood v. Hardy*, 868 F. Supp. 809, 812 - 13 (E.D.N.C. 1994), the court treated this issue and rejected the arguments asserted by Respondents below:

> This particular issue has been litigated in the Fourth Circuit Court of Appeals in *Dotson v. Chester*, 937 F.2d 920 (4th Cir. 1991), and in this Court in *Brewington v. Bedsole and Cumberland County*, No. 91-120-CIV-3-H (1993, Howard, J., and Dixon, M.J.). Both cases found that liability could be attributed under the rule set out in *Monnell v. Department*, 436 U.S. 658, 690 [other cites omitted] (1978). That rule establishes that an entity, such as a county, can be held liable if a person has been deprived of rights due to an official policy. [citations omitted]. Official government policy can be established not only by the formal policymaking actions of the lawmakers, but also by the actions of officials with final policymaking authority. [citations omitted]. The Sheriff is such an official, as indicated in N.C. Gen. Stat. section 153A-103(1), which gives the sheriff exclusive control over supervision of employees in his office...
>
> In North Carolina, where the Sheriff is given exclusive control over the supervision of his employees including deputies and jailers, the Sheriff may bind the County by his actions....

In *Flood*, a deputy sheriff was alleged to have engaged in improper law enforcement conduct by improperly "dumping" an inmate at a hospital without following required law enforcement standards of care. Consequently, the inmate died after wandering off from the hospital. The sheriff was en-

gaged in traditional law enforcement functions that sheriffs have historically performed.

Flood has been relied upon by leading national treatises as being representative of the rule in attributing law enforcement conduct of County Sheriff's Departments to counties under section 1983. See Pratt & Schwartz, *Section 1983 Civil Rights Litigation*, Volume 2 at 27 (1995) citing and analyzing *Flood*.

IV. SHERIFFS ARE FINAL COUNTY POLICYMAKERS FOR EMPLOYMENT FUNCTIONS WITHIN COUNTY SHERIFF'S DEPARTMENTS

In addition to holding counties liable for the constitutional torts of sheriffs in law enforcement functions, county liability is applicable in other contexts. A plethora of authorities have consistently held that Sheriffs are generally held to be county policymakers for purposes of employment terminations of deputy sheriffs.[8] The scenario in *Lucas v. O'Loughlin*, 831 F.2d 232, 235 (11th Cir. 1987) presents an

[8] E.g., *Bouman v. Block*, 940 F.2d 1211, 1231 (9th Cir. 1991)(delegation by County to Sheriff of final policymaking authority for employment matters renders County liable); *Davis v. Mason County*, 927 F.2d 1473 (9th Cir. 1991)(sheriff had final authority for training of deputies); *Maarchese v. Lucas*, 758 F.2d 181 (6th Cir. 1985)(sheriff is law enforcement arm of county and therefore makes final policy for county); *Crowder v. Sinyard* 854 F.2d 804, 828-29 (5th Cir. 1989)(sheriff as county policymaker); *Weber v. Dell*, 804 F.2d 796 (2nd Cir. 1986) (sheriff as final policymaker for county); *Anderson v. Gutschenritter*, 836 F.2d 346 (7th Cir. 1988). Police agencies typically have delegated employment decisionmaking authority to the Sheriff or police department, therefore making the governmental entity liable for the decisions of the sheriff or chief. E.g., *Larez v. Los Angeles*, 946 F.2d 630 (9th Cir. 1991)

appropriate analytical framework for addressing these troubling section 1983 issues. There, the court reasoned:

> Although elected by virtue of state law, he [the sheriff] was elected to serve the County as Sheriff. In that capacity, he has absolute authority over the appointment and control of his deputies. His and their salaries were paid by local taxation and according to a budget approved by the county commissioners.

Lucas consequently held that the sheriff was the final policymaker with respect to employment of deputies, therefore rendering the County liable for the Sheriff's conduct.

In *Buzek v. County of Saunders*, 972 F.2d 992 (8th Cir. 1992), the Eighth Circuit similarly grappled with the issue of whether a county could be liable for the actions of a sheriff in discharging a deputy for free speech. There, the trial court rendered a verdict on behalf of the plaintiff deputy against the Sheriff and the County. The deputy had communicated by letter to a judge supporting a criminal defendant on a sentencing matter. The letter angered the Sheriff, who dismissed the deputy. The court held:

> [Sheriff] Poskochil's broad discretion to set policy as the County's elected Sheriff, and the County Attorney's testimony that [Sheriff] Poskochil had exclusive authority to fire [Deputy] Buzek, adequately support the jury's determination that [Sheriff] Poskochil possessed the discretionary, policymaking authority necessary to hold the county liable for this decision. 972 F.2d at 996.

CONCLUSION

WHEREFORE, for the reasons stated herein and in Petitioner's brief, this Court should reverse the decision below. This Court should adopt the approach taken in *Dotson v. Chester* and other circuit courts.

J. Michael McGuinness*
P.O. Box 952
Elizabethtown, N.C. 28337
910-862-7087

*Counsel of Record
For *Amicus Curiae* SSPBA
Member, U.S. Supreme Court Bar